

Appl. No.: 10/824,089
Amendment dated June 7, 2005
Reply to Office Action of March 22, 2005

REMARKS/ARGUMENTS

Applicants have received the Office Action mailed March 22, 2005, and note with appreciation the indication that Claims 8 and 15 contain allowable subject matter. Applicant also thanks the Examiner for the courtesy extended to counsel of record, Kent R. Erickson, during a telephone interview on May 5, 2005, the substance of which is discussed in the remarks below directed to specific claims. Reconsideration of the pending claims is respectfully requested in view of the above amendments and the remarks below.

The Examiner rejected Claim 1, 5-7, 9, 13 and 14 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 2,629,624 to Nelles. In rejecting these claims, the Examiner maintains that Nelles discloses "first and second legs", "a first cross-member (17) extending between the first and second legs proximate the first ends thereof" and "an outer grip handle (25) connected to the first cross member and extending approximately perpendicular to the first cross-member."

During the telephone interview, counsel of record questioned how the Examiner was interpreting Nelles to show an outer grip handle connected to the first cross member and extending approximately perpendicular to the first cross-member as required by Claim 1. Applicant does not see how the structure identified by reference numeral 25 in Nelles can be described as an outer grip handle extending approximately perpendicular to the first cross member. The specification of Nelles describes 25 as the "bight 25 of the upper U-frame" which applicant would consider as generally corresponding to the first cross member extending between

Appl. No.: 10/824,089
Amendment dated June 7, 2005
Reply to Office Action of March 22, 2005

the first and second legs proximate the first ends thereof as required by Claim 1. The structure labeled 17 in Nelles which the Examiner equates to the first cross-member does not extend between the first and second legs proximate first and second ends thereof. Rather, cross-member 17 extends between the first and second legs medially relative to the ends.

During the interview, the Examiner did indicate that Claim 1 would appear to be allowable if the word "approximately" was deleted in front of "perpendicular" with reference to the orientation of the outer grip handle relative to the first cross-member. Claim 1 has been amended accordingly and is now believed to be in condition for allowance, along with the claims depending therefrom.

Applicant has also added new Claim 20 to further clarify the distinctions between the tool handle as originally claimed in Claim 1 and the disclosure of Nelles, without removal of the word approximately in front of perpendicular. To further distinguish original Claim 1 over Nelles, the language of Claim 20 has been modified to specify that the outer grip handle is "mounted on" instead of "connected to" the first cross-member. In addition, Claim 20 specifies that the outer grip handle is mounted on said first cross-member "between said first and second legs." It is believed that these modifications remove any argument that the "connected to" language could be read broadly to cover the indirect connection between elements 25 and 17 in Nelles. In view of this clarifying language and applicant's position that the cross-member 17 in Nelles does not correspond to the claimed first cross-member because cross-member 17 does not extend between

Appl. No.: 10/824,089
Amendment dated June 7, 2005
Reply to Office Action of March 22, 2005

the first and second legs proximate the first ends thereof as required by Claim 20, it is respectfully submitted that new Claim 20 is allowable over the prior art of record.

During the interview, discussion was also had on how element 25 of Nelles can be described as being "rotatable about an axis extending through said first cross-member" as required by Claim 5. To the extent element 25 rotates, it rotates about an axis extending through pin 9 and not cross-member 17. The Examiner indicated that replacing "is rotatable" with "rotates" in Claim 5 should make the claim distinguishable over the disclosure of Nelles. Claim 5 has been amended to replace "is rotatable" with "selectively rotates" which applicant believes is consistent with the language the Examiner identified as being distinguishable over Nelles. Claim 19, which was rejected as being obvious based upon Nelles in view of Waluk, has been similarly amended to replace the "is rotatable" language with "selectively rotating" to more clearly distinguish over the disclosure of Nelles. New Claim 21 which depends from new Claim 20 discussed above, includes a similar limitation. Claims 5, 19 and 21 are therefore believed to be in condition for allowance.

Claim 9 has also been amended to specify that the outer grip handle selectively rotates about a pivot axis extending through the first end of the tool handle leg and wherein the pivot axis extends approximately perpendicular to a tool handle axis. It is respectfully submitted that amended Claim 9, and the claims depending therefrom, distinguish over the prior art of record including Nelles.

Appl. No.: 10/824,089
Amendment dated June 7, 2005
Reply to Office Action of March 22, 2005

Claims 16 and 17 were rejected as being anticipated by U.S. Patent Number 5,048,883 to Waluk. Applicants respectfully disagree with the Examiner's conclusion that the inner grip handle of Waluk is slidably connected to the telescoping leg assembly. Waluk does not disclose structure for permitting a sliding connection between the inner grip handle and the leg assembly. To further clarify this distinction, claim 16 has been amended to specify that the "inner grip handle is connected to said telescoping leg assembly by sliding connector." Claims 3 and 11 which were rejected as obvious based upon Nelles in view of Waluk have similarly been amended to specify that the "inner grip handle is connected to said first and second legs by a sliding connector" and are therefore believed to distinguish over Nelles in view of Waluk. Claim 17 has been amended to more specifically claim a sleeve as the sliding connector. It is respectfully submitted that this combination of elements is neither disclosed nor obvious in view of the prior art of record.

Claims 4, 12 and 18 were rejected under 35 U.S.C. 103(a) as being obvious based on Nelles in view of Waluk and further in view of Vosbikian. In view of the amendments to the independent claims from which these claims depend, namely Claims 1, 9 and 16 respectively, these rejections are now moot. Moreover, applicant is not aware of any teaching or disclosure in Nelles or Waluk which might suggest that their inner grip handles (21 for Nelles and 32 for Waluk) might be mounted in a manner to permit pivoting of the handles as separately disclosed by Vosbikian. It appears that the inner grip handle 21 of Nelles must be rigidly connected to the lower frame 2 to securely support the upper frame 3 when unfolded. Mounting inner grip handle

21 to lower frame 3 so that it could pivot as in Vosbikian would not provide the rigidity or strength required in the overall handle as discussed in Col 3, lines 40-55. Therefore, it would not have been obvious to one skilled in the art to modify Nelles in view of Vosbikian to pivotally attach the inner grip handle 21 to the lower frame 2.

In the Waluk patent, the inner grip handles 32 are not intended for use in lifting the shovel. Rather the handle assembly is adapted to facilitate pushing of the snow across the ground. Referring to Fig. 2 of the Waluk patent, the outer ends of the rails 20 and 21 are bent to form shoulder engaging portions 27 (see Col. 2, lines 59-60) and the hand grips 32 extend downward below the rails 20 and 21 to provide grips for the users hands (see Col. 3, lines 10-17). The user pushes with their shoulder by leaning into the shoulder engaging portions 27 and the user grips the hand grips 32 with their hands to both push and control the movement of the shovel as the user pushes the snow forwardly (see Col. 3, lines 33-52). There is no discussion in Waluk of using the hand grips 32 or the crossbar 30 to which the grips are attached to be used in lifting the shovel. Therefore there would be no need to modify the inner hand grip of Waluk to be pivotal in the manner taught by Vosbikian. In addition, it is respectfully submitted that pivotally mounting hand grips 32 or cross bar 30 to rails 20 and 21 would make pushing and control of the shovel more difficult and therefore counterproductive. Therefore, it would not have been obvious to one skilled in the art to modify Waluk in view of Vosbikian to pivotally attach the inner grip handles 32 or crossbar 30 to the rails 20 and 21.

Appl. No.: 10/824,089
Amendment dated June 7, 2005
Reply to Office Action of March 22, 2005

New claims 22 and 23 have been also been added for consideration by the Examiner.

Conclusion

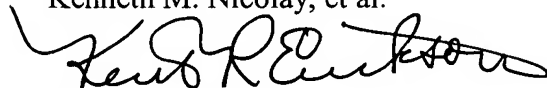
Applicants have considered the additional prior art cited by the Examiner, but not applied against the claims. The claims, as amended, are deemed to be patentable over these references as well.

In view of the amendments contained herein and the above remarks, it is respectfully submitted that Claims 1-23 are clear and definite and that they are patentable over the prior art of record. Accordingly, the Examiner is requested to issue a Notice of Allowance indicating such.

In the event that the Examiner is of the opinion that the prosecution of this application can be advanced thereby, he is invited to contact Applicant's attorney at the telephone number listed below.

Respectfully submitted,
Kenneth M. Nicolay, et al.

By



Kent R. Erickson
Reg. No. 36,793
Attorney

ERICKSON & KLEYPAS, L.L.C.
800 W. 47th Street, Suite 401
Kansas City, Missouri 64112
Phone: (816) 753-6777

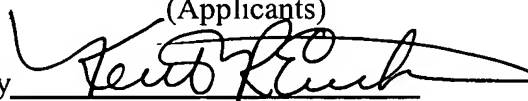
Appl. No.: 10/824,089
Amendment dated June 7, 2005
Reply to Office Action of March 22, 2005

Certificate of Mailing

I hereby certify that this Amendment for application Serial No. 10/824,089, filed April 14, 2004 is being deposited with the United States Postal Service as first class mail in an envelope addressed to Mail Stop Amendments, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on June 7, 2005.

Kenneth M. Nicolay, et al.

(Applicants)

By 
Kent R. Erickson

June 7, 2005

(Date of Signature)